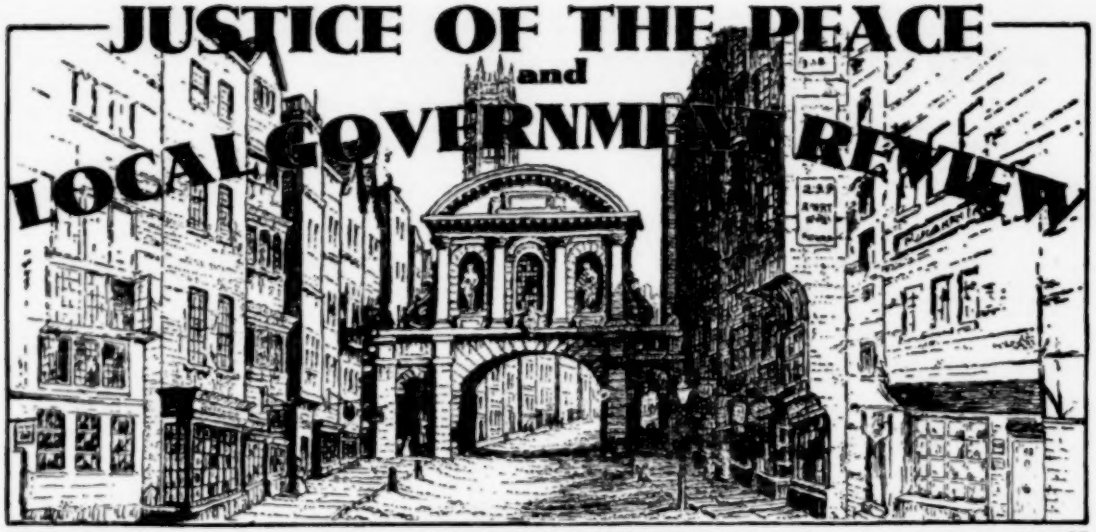

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Clerk of the Council.

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O. CARGILL,
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Shire Hall,
Nottingham.

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Clerk of the Standing Joint Committee.

The Castle,
Winchester.
September 18, 1951.

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NOTES of the WEEK

New High Court Judge

The King has signified his intention of appointing Mr. Colin Hargreaves Pearson, C.B.E., K.C., to be a High Court Judge from October 1 next in succession to the Rt. Honourable Mr. Justice Humphreys, the doyen of the King's Bench Division, who is retiring.

The new Judge, who is fifty-two years of age, was educated at St. Paul's School and Balliol College, Oxford (where he was a Classical Scholar and a Jenkyns Exhibitioner). Called to the Bar in 1924 by the Inner Temple, he took silk in 1949 and has been Recorder of Hythe since 1937. His Lordship has enjoyed an extensive practice in commercial cases.

He was Junior Common Law Counsel to the Ministry of Works from 1930 to 1949, and was a temporary member of the Treasury Solicitor's Department from 1939 to 1945.

Driving while Disqualified—*Lines* v. *Hersom*

We referred to the case of *Lines* v. *Hersom* in a note of the week at 115 J.P.N. 479, and we said in that that the report we had seen of this case did not give details of the facts. The case is now reported at [1951] 2 All E.R. 650, and we think that our readers would be glad to have their attention called to the judgment of Lord Goddard as there reported which gives the details which formerly were missing.

Taking and "Driving" Away

Another important road traffic decision is that of *Shimmell* v. *Fisher and Others* [1951] 2 All E.R. 672. The facts were that three men, without the owner's consent, released the brake of a stationary lorry and moved it by pushing it and steering it without starting the engine. An attempt to start the engine failed. Justices dismissed charges under s. 28 of the 1930 Act on the ground that "takes and drives away" in s. 28 must mean something different from "takes and carries away" in the Larceny Act, 1916, s. 1 (1). On appeal by case stated the Divisional Court held that "'driving away' in s. 28 (1) must be construed as causing the vehicle to move, and so a motor vehicle can be said to be driven if somebody pushes and somebody steers and thus it is made to move from the place where it has been standing."

The Lord Chief Justice went on to refer to the proviso to s. 28 (1) by which it is a defence to a charge under the section to show that one acted in the reasonable belief that one had lawful authority or in the reasonable belief that the owner would have consented. This, said Lord Goddard, shows that the statute is not meant to deal with the case where a person is moving a vehicle simply for his convenience, because, for example, it is blocking his doorway. That is not an offence, but the very fact that the legislature has put in that proviso shows that any other form of moving a vehicle is an offence.

"Without Prejudice"

Now that reconciliation, rather than separation, has become the policy of probation officers and other social workers and, it may be added, of most courts dealing with matrimonial problems, the principle that all who are engaged in attempts at reconciliation should understand clearly how far what takes place at interviews is to be regarded as "without prejudice" is of the utmost importance. Any privilege is of course that of the parties and not of the probation officer, or other person present at the interview. What is essential, if parties are to speak freely and truthfully at interviews concerned with possible reconciliation, is that if they wish the whole negotiations to be "without prejudice" they should be in a position of certainty that evidence of what was said will not be given unless they waive their privilege.

The decisions and the dicta of judges have not been quite uniform in this matter. They were exhaustively considered by Havers, J., in *Pool* v. *Pool* [1951] 2 All E.R. 563. In this case, before the trial of a petition for divorce filed by the wife, two meetings were held in counsel's chambers at which there were present counsel and solicitors for the parties. The husband attended the meetings but the wife did not. The sole purpose of the meetings was to effect a reconciliation between the parties, and it was proved in evidence that the words "without prejudice" were not actually used.

After hearing argument and evidence on this point, Havers, J., held that in the circumstances the inference must be drawn that there was a tacit understanding that the conversations were "without prejudice" and the meetings were, therefore, privileged. The learned judge applied the observations of Denning, L.J., in *McTaggart* v. *McTaggart* [1948] 2 All E.R. 754 and declined to follow *Bostock* v. *Bostock* [1950] 2 All E.R. 328.

Probation Order in the Court of Criminal Appeal

Recently the Court of Criminal Appeal made a probation order in substitution for a sentence of imprisonment passed by a court of quarter sessions. The question may one day arise, in the event of a breach of requirements by what court is the probationer to be dealt with?

A summons or a warrant could no doubt be issued by a justice acting for the division of the supervising court, but if the case was not one which could properly be dealt with by a fine and the continuance of the probation order, the point would be where to commit the offender. Section 6 of the Criminal Justice

Act, 1948, provides for committal to a court of assize or of quarter sessions by which a probation order has been made, but is silent as to the position where the order had been made by the Court of Criminal Appeal.

The alternatives seem to be to read into the section something that is not there, and commit to the Court of Criminal Appeal, or to treat the order, which is in substitution for a sentence passed by quarter sessions, as if it had been made by quarter sessions and commit to that court.

A similar problem could arise about committal under s. 8. Only a superior court can settle the matter, and justices must, in the absence of a decision deal with the point, if it should arise, as they may be advised. It would of course be helpful if the magistrates' court concerned could obtain an intimation from the Court of Criminal Appeal as to the wish of the Court to have the probationer brought back or to leave him to be dealt with by quarter sessions. Any such intimation would be treated as sufficient for the inferior court. In the case of an order made in substitution of a sentence passed at assizes, the same difficulty and the same arguments would seem to apply.

Unpleasant Duty

The majority of people would rather keep out of the courts, especially the criminal courts, and so if they are asked to prosecute or give evidence many of them reply that they would much rather not be mixed up in that kind of thing. This may be natural, but it is not helpful. If nobody is willing to give evidence, offenders can go on their criminal way unchecked, and soon become a nuisance and perhaps a danger. There is nothing necessarily harsh or unfeeling in setting the law in motion or in facilitating its course. The courts must be trusted to exercise leniency when it is deserved, and it is hardly for ordinary individuals to decide that an offence of gravity should be overlooked just because someone does not like being mixed up in a prosecution.

The Western Daily Press reports a case in which a seventeen year old girl gave material assistance to the police in tracing and bringing to justice a man who subsequently to his arrest admitted several offences of a disagreeable nature. The girl was in the act of telephoning from a call box when she heard a voice, which proved to be that of a man, who made indecent remarks. While she kept him in conversation, a friend telephoned to the police. In the result, a telephone call was arranged for two days later, and then, by quick police work, including the use of wireless, the offender was caught in a call box, with the receiver still in his hand. He pleaded guilty, apologized, and was fined. The Bristol magistrates who heard the case commended the girl for her public spirit.

It must have been distasteful for such a girl to become involved in a nasty case like this, but she did not shrink from a duty which brought her into some unwelcome publicity. We were glad to notice that the paper in question refrained from publishing her name or address. Had she been a year younger, the court might have prohibited such publication. However, the dictates of good taste were sufficient and the girl was spared embarrassment.

Revival of Maintenance Order

In these days of housing shortage, there must be a certain number of cases in which a wife, having made application and obtained a maintenance order while residing with her husband, finds it impossible to obtain accommodation elsewhere. If she continues to reside with him for three months after the making of the order, the order ceases to have effect, by virtue of s. 1 (4) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925. The wife who has no desire to share a residence with her husband but is forced to do so by circumstances beyond her control is in the unfortunate position of having lost her maintenance order, and there may be obstacles in the way of her obtaining a fresh order.

Possibly there may be a simpler course than an attempt to obtain a new order. It has been suggested that the wife may apply to have the order revived, under the provisions of s. 30 (3) of the Criminal Justice Administration Act, 1914. The onus is upon her to show cause why the order should be revived as she has failed to do what would have prevented the order from lapsing. If, however, she satisfies the court that it was quite impossible for her to find anywhere to reside apart from her husband, but that at last she is now able to say that she has ceased so to reside, it is at least arguable that the court has power, if it thinks fit, to revive the order.

If this view be correct, it brings it within the power of the justices to deal in a practical way with cases in which there would otherwise be hardship upon a wife who has not been at fault, but simply the victim of misfortune.

Probation in Germany

The German Federal Government has initiated an experimental probation service, and has appointed a few whole-time probation officers. The Foreign Office, in conjunction with the Home Office, is giving every possible assistance to the German Government and a party of German judges and social workers has been visiting this country during the present month to study our probation system and to gain experience that will help them to develop the probation system in Germany. A number of visits to courts, approved schools, remand homes and other institutions have been arranged and opportunities for discussion with probation officers and Home Office inspectors have been afforded. It is hoped that by these means the German visitors will get an adequate picture of the way the English probation system has developed and how it is now working and will thus be able to see how far English methods can usefully be imitated.

In *Probation and Related Measures* published by H.M. Stationery Office, it is stated that from 1895 onwards a system of conditional pardon was introduced in most of the German States. This consisted of the temporary conditional suspension of the execution of sentence, at the discretion of the public prosecutor, followed by a more definitive order made by the Minister of Justice. This applied principally to young offenders. In Germany conditional pardon was retained much longer than in other countries, despite repeated efforts to replace the measure by the conditional sentence. After the first world war some of the states transferred from the executive to the judicial authorities the prerogative of granting conditional pardon, and thereby modified the original device in such a way that it approximated the judicial application of the conditional sentence. Juvenile probation was introduced in 1922. The introduction into federal criminal law of the conditional sentence with provision for probationary supervision was approaching realization at the time of the Nazi assumption of power.

It seems that the time is now ripe for the introduction into the penal system of the Federal German Republic of a system of probation as we understand it. Modifications will no doubt be necessary for, as one German said in a recent discussion " It is necessary to take into account the German mentality. Officials are not liked, and a probation officer who is an official may be regarded as an enemy by the probationer and his family."

What Constitutes an Assault?

It is well established that there can be an assault without battery, and that detention can in certain circumstances amount to assault. A Devonshire magistrates' court was recently set a difficult problem as to an alleged assault on a thirteen year old child.

The prosecution alleged, according to a newspaper report, that this child went to the defendant's house, without permission of her parent, with another girl whose parents had given permission, and that both acted as models for photography in the nude. The defendant was accused of indecent assault.

It appears that the submission of the prosecution was that the child was too young to give consent, and that to induce her to remain away from her parents without their consent was such a detention as to constitute an assault, and that if that were so then it was an indecent assault.

The justices declined to accept the argument and dismissed the charge. It would, we believe, be going rather further than the existing decisions have gone, to hold that there is an assault, even on a child, when there is no more than an invitation and no suggestion of restraint of liberty such as there was in *Hunter* v. *Johnson* (1884) 13 Q.B.D. 225. The report is brief, however, and it may be that the prosecution adduced argument that was not clearly reported.

In the same set of proceedings, the defendant was, according to the same newspaper report, conditionally discharged on another summons connected with the publication of photographs, and a condition was imposed as to not employing persons to act as models for the purposes of photography.

The power to make an order of conditional discharge derives from s. 7 of the Criminal Justice Act, 1948, and the only condition authorized is that the defendant does not during the period named commit a further offence. The section does not include any power to insert special requirements as in the case of a probation order. Possibly the explanation is that the defendant was asked to give, or offered to give, an informal undertaking.

Breach of a Probation Order

Under the Probation of Offenders Act, 1907, the probationer who committed a further criminal offence, and the probationer who in any other way failed to observe the conditions of his recognizance, could be proceeded against and dealt with under the same section, but the Criminal Justice Act, 1948, distinguishes between the procedure and powers of the court where the probationer commits a further offence (in which case the proceedings are regulated by s. 8) and where the probationer fails " to comply with any of the requirements of the order " (s. 6). The suggestion was recently made before a metropolitan court that the procedure under these sections is not mutually exclusive, and that it is still open to a court in the appropriate circumstances to hold that a conviction for a further offence can be treated as evidence of a breach of the requirements of the order. In the case which gave rise to this suggestion the probationer had been brought before the court on a summons issued under s. 8 following upon his conviction, during the period of probation, by another court of the offence of travelling on the railway without having paid his fare—for which offence he had been fined. He had originally been placed on probation for a period of two years for " shop lifting " with the requirement that he should " be of good behaviour and lead an honest and industrious life." The probation officer stated that the probationer had responded fairly well to supervision—at least inasmuch as this incident was the only concrete instance of a failure to comply with the requirements of the order. In the view of the probation officer the defendant would benefit from remaining under supervision for six months which remained of the original period of two years, especially if the court brought home to the probationer the need to comply strictly with the requirements of the order by imposing a fine upon him for the breach of the requirement to be of good behaviour which was represented by this conviction at the other court.

The short answer to this suggestion was that the power to impose a fine for a breach of a probation order exists only when a defendant is brought before the court under s. 6. The more fundamental objection is that to fine a defendant for a breach which is evidenced only by conduct for which the defendant has already been punished by another court is in effect punishing a defendant twice for one offence. Furthermore it is clear from the wording of the 1948 Act—especially when regard is had to the absence of such distinction in the 1907 Act—that it was the intention of the legislature that probationers who commit a further offence while on probation should be dealt with under s. 8 and that section alone.

The court accepted this view, and, since it agreed that the probationer required further supervision, made a fresh order for one year. To make such an order is undoubtedly within the letter of the law since s. 8 empowers the court to deal with the offender, for the offence for which the order was made " In any manner in which the court could deal with him if he had just been convicted by or before that court of the offence," but there are awkward implications. In the first place there will be two orders in force since the probationer has not been sentenced for the offence for which he was placed on probation, and the original order therefore still has effect. This difficulty can be surmounted by the probation officer applying under para. 1 of sch. 1 for the original order to be discharged, but there remains the objection that it seems wrong in principle to put a person on probation twice for the same offence. Certainly it would be against the spirit of the Act for a court which had placed a person on probation for three years to make a further probation order (in respect of the original offence) near the end of the three year period.

The conclusion seems to follow that courts will do well to avoid such difficulties by issuing process under s. 8 only where the court contemplates bringing the probation to an end by sentencing the probationer for the original offence. Where, as in the case giving rise to this discussion, it is thought that the probationer's conduct is such that the order should be extended or additional requirements added, and there are no grounds for issuing process under s. 6, it would seem better for application to be made under para. 3 of sch. 1.

State Owned Taverns

When the Licensing Act, 1949, was going through Parliament none of its provisions was attacked more strongly than the proposal to place " new towns " under state management in regard to local licensing, and to extend the system also to some surrounding areas. Deep distrust was manifested, not merely amongst the normal opponents of the present Government or the regular opponents of nationalized or municipal trading, against the notion of having state owned public houses. Carlisle is far away, and few people know whether the public houses there are pleasant or unpleasant places, but in the controversies of 1949 the peculiar institution of the English inn was said to be one which could not survive public ownership: its licensee was a special type of man, who could not survive employment in the public service. The *New Town News* (of which we have already noticed the earlier issues, since the publication became available generally) has in a recent number a good deal to say upon the subject of state management in new towns, arising particularly from the case of Hemel Hempstead. The Home

Secretary's view is said to be that public houses, and most hotels with public bars, in proposed new towns should be included in the state management scheme, as also shops wholly or mainly devoted to off licence trade. Exceptions may be made, but it seems that they will not be many. If a particular public house is unsatisfactory or badly sited, it will none the less be acquired by the Home Secretary with a view to improving it or closing it. The licensed part of the business of a licensed grocer or licensed chemist can also be acquired by the Home Secretary with a view to his suppressing it. It is interesting in this context to remember how the licensed grocer and licensed chemist came into existence in the nineteenth century, as a temperance measure, greatly favoured by Gladstone, who thought that if people could buy alcoholic liquor in an ordinary shop they would avoid the temptations of the public house. Fortunes have been made out of the grocers' licence trade, but the mid-nineteenth century view of it does not seem to be widely held at the present day. The Home Secretary proposes, however, ordinarily to defer using his powers of purchase in these cases. It is also stated that he will defer at present the acquisition of licensed premises in which the sale of liquor is subordinate and incidental, as in an ordinary restaurant or hotel if there is no public bar. It is not regarded as inconsistent with the general objects of state management, nor as leading to undesired competition with state management, to leave premises of this sort in private hands. It seems a pity that there cannot be direct competition upon equal terms. We see no reason why a publican should be disagreeable or disobliging merely because he is a public servant and, so long as the liquor was no worse and no more expensive, there should be no reason to avoid a state owned tavern which is otherwise convenient. But, by making competition with state management a ground for suppressing public houses, the Government are depriving their patrons of the chance to show that it is all one to the consumer whether the beer engine is pulled by private enterprise or public energy.

Buckinghamshire Weights and Measures Department

The report of the Chief Inspector of Weights and Measures for Buckinghamshire covering the year ended March 31, 1951, emphasizes a point to which we have referred in dealing with other similar reports, namely that the main work of such a department does not consist in prosecuting offenders, but rather in helping both traders and the general public.

"The keynote of any *Public Protection Service* such as is administered by my department is to *prevent* fraud by maintaining:

1. A just standard of weight and measure;
2. A good standard and quality of food and drugs;
3. A milk supply free of disease organisms;
4. A good standard of fertilisers and feeding stuffs;
5. To promote fair trading and the welfare of shop assistants.

"If these standards are wholly maintained and your officers' duties efficiently performed, offences can be eliminated and successful administration measured not by the number of prosecutions, but rather by the absence of them. Nevertheless, it is always satisfactory to detect infringements so long as they occur.

"Good relations between your officers and traders and the public generally are essential and these have never been better than at present."

Figures contained in the report bear out the statement that the general condition of weighing and measuring instruments in the county is satisfactory, and this is a matter of first importance since deliberate fraud on the part of traders is much less common than are mistakes due to faulty weights, measures or instruments.

Buckinghamshire contains a large number of factories, many of them engaged in trade in pre-packed foods. Every factory was visited at least once a quarter and 11,377 packets of food were check-weighed or measured and 2.3 *per cent.* were found to contain short weight or measure. The percentage of deficiencies found in the previous year was 2.8.

In contrast to the position in some other areas, there has been a definite improvement with regard to the sale of coal and coke. There has been an appreciable reduction in the number of short weight sales detected during the year. Though the number of inspections and check weighings have increased, the amount of short weight found has dropped from 25.8 *per cent.* to five *per cent.* As to liquid fuel there was a fairly large percentage, namely 9.3, of cases in which tests showed incorrect delivery, seldom to the detriment of the purchaser, so it seems that purchasers need have little fear of receiving short measure in petrol or oil for their vehicles.

As is well known, poor quality milk is not always adulterated milk, and here again inspectors of the local authority can and do help producers. During a series of tests thirty-eight samples were found to be deficient in fat or solids-not-fat, but the "follow up" samples revealed that the milk was being sold as it came from the cows. These cases are referred to the Livestock Officer of the Ministry of Agriculture and Fisheries who advises the producer on improved methods of production.

As to fertilizers and feeding stuffs, the report notes a high proportion of unsatisfactory samples, but adds that no effective action could be taken because of the inadequate protection afforded by the Act of 1926. Hopes of improvement are entertained following upon the appointment by the Minister of Agriculture of a standing advisory committee.

New Plans for Sanitary Officers

A revolutionary change in the practice for appointing medical officers of health and sanitary inspectors outside London is brought about by the Sanitary Officers (Outside London) Regulations, 1951, S.I. No. 1022, which came into force on July 1. Similar provisions for London are made in parallel regulations coming into force on the same day, but applying only to metropolitan borough councils. Those medical officers of health and sanitary inspectors who have hitherto enjoyed security of tenure, to the extent that they could not be dismissed without the consent of the Minister of Health, still enjoy that protection. The appointing local authority does not, however, any longer require the Minister's specific approval to a new appointment or to salary, the salaries being left to settlement by the appropriate negotiating bodies. Accordingly the Minister has appointed a working party to inquire into the recruitment, training, and examination of sanitary inspectors and, when the working party has reported, consolidated regulations will be issued. County councils are being asked not later than December 31, 1952, to review the arrangements made under s. 111 of the Local Government Act, 1933, for co-ordinating the work of medical officers of health in non-county boroughs and urban and rural districts with that of the corresponding staff employed by the county councils. The plan is to be encouraged of combining the duties of medical officer of health with a part-time position in the county council's service, which will give the medical officer of health an opportunity to keep in touch with "personal health" services. Older readers will remember the objection commonly taken a generation ago, against the appointment of whole-time medical officers of health, on the ground that such a man lost touch with the needs of ordinary medical practice. It was widely recognized that there was something in this objection to the whole-time system: there is indeed a similar objection to whole-time local government service in other spheres. In the medical sphere the plan of dual appointment is recommended in order to mitigate the objection.

DECLARATIONS BY DECEASED PERSONS

[CONTRIBUTED]

As a general proposition hearsay evidence is not admissible because first, it is not given on oath by the "third party," and secondly, because the party affected by such evidence has no opportunity of cross-examing. To this generalization, however, there are exceptions, and one such exception is in the case of statements made by deceased persons in the usual course or routine of business, or when they were made against the interest of the declarant.

This relaxation of the otherwise stringent rules which exclude hearsay is aptly explained by Thesiger, L.J., in *Bewley* v. *Atkinson* (1879) 13 Ch.D. 283 in these words: "The principle upon which written entries of a deceased person are admissible in evidence is this, that, in the interest of justice, where a person who might have proved important material facts in an action is dead, his statements before death—I pass over for the moment whether in writing or verbal—relating to that fact are admissible, provided there is a sufficient guarantee that the statements made by him are true. It is considered, and properly considered, that where the statements made by a person were statements against his interests, those statements, at all events in the general run of cases, would be true. Now is there any reason in principle why there should be a distinction made between the written entries of such a deceased person under such circumstances and his verbal declarations? I can see no reason. When the statements are merely verbal, there is every reason for watching more carefully the evidence by which those declarations are proved; but provided you are satisfied the declarations were in fact made, there is no reason whatever why there should be any distinction between the admissibility of the verbal declarations and the admissibility of the written entries."

Two of the leading cases touching on statements made in the usual and ordinary course of business are: *Price* v. *Torrington* (*Earl of*) (1703) 1 Salk. 285, and *R.* v. *Buckley* (1873) 13 Cox C.C. 293. The former case was an action by a brewer for beer supplied. It was proved that the practice at the plaintiff's brewery was for the drayman who took the beer to sign his name in a book kept for the purpose before he went home. The particular drayman who had taken Lord Torrington's beer was dead, but he had duly made his entry in the book provided, and the question was whether it was admissible evidence for the plaintiff. The court held, on the ground that it was an entry made by a disinterested person in the ordinary course of his business, that it was. In the latter case—a murder trial—it appeared that the deceased constable had shortly before his death, and in the course of his duty, made a verbal statement to his superior officer as to where he was going, and what he was going to do. It was held that such statement, which was to the effect that the deceased was going to watch the prisoner, was admissible. In *Polini* v. *Gray* and *Sturla* v. *Freccia* (1879) 12 Ch.D. 438, Brett, L.J., said that in order that a statement might be admissible as falling within the above rule it must satisfy four conditions: (1) that it is an entry of a transaction effected or done by the person who makes the entry, (2) that it is an entry made at the time of such transaction or near to it, *e.g.*, a report of an expert employed to inspect property is inadmissible after death of the writer, unless it was written when the inspection took place, *In re Djambi Rubber Estates, Ltd.* (1912) 107 L.T. 631, (3) that it is made in the usual course and routine of business by that person, and (4) that he was at that time a person who had no interest to misstate what had occurred.

Under the second limb of the exception, *i.e.*, statements made against pecuniary or proprietary interest, we have the case of *Higham* v. *Ridgway* (1808) 10 East 109, 10 R.R. 235, where, the question was whether a person was born on a particular day. Entries in the books of a deceased man-midwife were deemed to be relevant. They read: "W. Fowden, jun's wife, Filius circa hor. 3 post merid. natus H., W. Fowden, jun, Ap. 22 filius natus Wife £1 6*s.* 1*d.* Paid 25th Oct., 1768." This entry was admitted in evidence on the ground that it was a declaration against interest, the law shrewdly suspecting that no one would put himself down as paid when he had not been.

Another striking example of the working of this "against interest" rule is to be found in the comparatively recent case of *R.* v. *William Joyce* 1945. It will be remembered that it was of some importance to the defence to prove that William Joyce was not in fact a British subject, as certain of the counts in the indictment against him charged him as having that status and doing the acts complained of. When Joyce's brother gave evidence for the defence, he stated that his father had mentioned the question of his nationality in conversation with him on a number of occasions. The trial then proceeded as follows:

"Mr. Slade: 'What did he say to you about it? First of all, what did he tell you, if anything that his nationality was?'

"The Attorney-General: 'I must formally object again to this, my Lord.'

"Mr. Justice Tucker: 'I think that the nationality under which a man passes is a different thing from specific statements made by a man. I think it is some evidence which is admissible in a case of this kind, to say that a man generally recognized or taken to be a citizen of a certain country, but where there is an issue of this kind I think statements made by the father of the man to this witness are on a different basis, and I do not think it is strictly admissible.'

"Mr. Slade: 'I can give your Lordship my authority but I do not desire to press it; I would not have put the question had it not have been supported by the authorities. The case I have in mind is *In re Perton* (1885) 53 L.T. 707. There is another authority which is helpful, that is the *Tipperary case* (1875) 3 O'Malley & Hardcastle 19. The way I make my submission is this. There are two kinds of declarations by a deceased person which are admissible—we have already had evidence that Michael Joyce (the father) is deceased—(1) declarations against financial interests—I do not suggest that that is this and (2) declarations against propriety interest, and the authority *In re Perton* is the authority for the proposition that an admission in regard to status is an admission against one's proprietary interest in this way, only a British subject is entitled to the franchise, only a British subject is entitled to become a member of the House of Commons, and so on, and to make a declaration that you are no longer a British subject is a declaration against proprietary interest. I have not got *In re Perton* but I remember the facts, and shortly they were these. In that case, which in a sense may be termed a pedigree case, the question turned on whether a deceased person was legitimate or illegitimate. The crown were claiming the property upon the footing that the deceased was illegitimate, and the Crown put in evidence which was objected to, but which was admitted, a declaration by the deceased person himself that he was illegitimate. It was admitted on two grounds, firstly, that it was a pedigree case and it was admissible on that ground, and the learned judge also said that he thought it admissible as being against interest. The case is also cited in the 11th

edition of *Taylor on Evidence*, vol. I, p. 461, as authority for the statement that admissions against status are declarations against interest. It does not matter whether the declaration is oral or in writing'."

As can be appreciated it was not possible for the court to give a ruling on such a fine point of law without recourse to the authorities quoted and, as these were not readily available, Mr. Slade did not press the point.

As a matter of application it is important to distinguish between declarations made in the ordinary course and routine of business and those made against pecuniary or proprietary interest. In the case of the former only so much of the entry as it was the man's duty to make is admissible; any other fact which happens to be stated in the entry, no matter how naturally it occurs, is excluded. Thus in the case of *Chambers* v. *Bernasconi* (1834) 1 Cr. M. & R. 347, it became necessary to show that a person had been arrested in South Molton Street. The sheriff's officer who had arrested him had died since the arrest, and it was proposed to put in evidence a certificate made by him at the time of the arrest, which specified, with other circumstances, the place of arrest. It was held, however, that although the certificate would have been admissible to establish the fact of arrest, it could not be accepted in evidence to show where the arrest took place, inasmuch as the duty of the officer was to annex to the writ a certificate stating merely the fact of arrest and not the particulars of it.

In the case, however, of entries admissible under the rule of "contrary to pecuniary or proprietary interest" not only is the particular entry admissible if against the writer's interest, but any other fact which happens to be stated in the entry. For instance, to take the case of *Higham* v. *Ridgway* (as mentioned previously), the only part of the entry which was against interest was the item "Paid 25 Oct. 1768," which in itself did not reveal any *nexus* with any person or for any service rendered. It was only by the permissible admission of the whole of the entry that it became germane in the applied sense.

Finally, it should be noted that in order that an admission made by a dead person may be admissible in evidence on the ground that it was against his interest, it must have been actually against his interest at the time it was made; it is not sufficient that it might turn out afterwards to have been against his interest: *Ex parte Edwards*; *In re Tollemache* (1884) 14 Q.B.D. 415.

J.E.

PREVENTION OF DAMAGE BY PESTS ACT, 1949

This Act of thirty sections which came into force on March 31, 1950, re-enacts with modifications the Rats and Mice (Destruction) Act, 1919 (repealed by the Act), and provides for the prevention of loss of food by infestation.

Part I (ss. 1-12) deals with rats and mice, Part II (ss. 13-18) relates to infestation of food, and Part III (ss. 19-30) comprises various supplemental provisions (*e.g.*, regulations, powers of entry, legal proceedings, etc.).

For the purposes of Part I of the Act the responsible local authorities are the common council of the City of London and the councils of Metropolitan boroughs, county boroughs, and county districts. There is specific provision saving the powers of port health authorities and, where sewers are vested in a county council, making them the authority for the purposes of Part I of the Act. The Act departs from the previous position in that before March 31, 1950, the local authorities responsible for the enforcement of the Act of 1919 were, outside London, county councils and county borough councils, though the functions of the former could be delegated to county district councils. Inside the Metropolis they were the same as under Part I of this Act.

The duties of the responsible local authorities are "to take such steps as may be necessary to secure so far as practicable that their district is kept free from rats and mice," and in particular they must carry out any necessary inspections, destroy rats and mice on land which they occupy, and enforce the duties of owners and occupiers of land under the Act, and carry out operations authorized by the Act (s. 2). This section, therefore, imposes mandatory duties on the local authority responsible which substantially reinforce the preventive powers of the Act as contrasted with the previous Act of 1919. The duties of occupiers of land are dealt with by s. 3 of the Act, which imposes a mandatory duty on such an occupier "to give to the local authority forthwith notice in writing if it comes to his knowledge that rats or mice are living on or resorting to the land in substantial numbers." Failure to give this notice may make the occupier liable on summary conviction to a fine not exceeding £5. This section does not apply to "agricultural land" (subs. (2)) as defined by s. 109 (1) of the Agriculture Act, 1947.

Before the Act the responsibility for the destruction of rats and mice was that of the occupier, who was obliged by s. 1 of the Act of 1919 "To take such steps as may be necessary and reasonably practicable" in that behalf.

Powers of enforcement are vested in the local authority by virtue of s. 4 of the Act. This section enables the authority if it appears to them that steps should be taken for the destruction of rats and mice to serve on the owner or occupier a notice requiring him to take "Within such reasonable period as may be specified in the notice, such reasonable steps . . . as may be so specified . . . ." Separate notices may be served on both the owner and the occupier where these are different persons, and such a notice may require a particular form of treatment in relation to the land and the carrying out on the land of structural repairs or other specified works: s. 4 (2) (*a*) (*b*).

If the local authority serve such a notice in relation to agricultural land they are under a duty to inform the county agricultural executive committee concerned.

Subsection (5) of the section applies s. 290 (3) (4) (5) of the Public Health Act, 1936, to notices served under the section and thereby provides a means of appeal to a court of summary jurisdiction. Subject to this right of appeal, s. 5 provides remedies in the event of failure by an owner or occupier to comply with a notice under s. 4 (a person summarily convicted being liable to a fine for a first offence not exceeding £50). If this happens then the local authority may themselves take the specified steps and recover from the owner or occupier any expenses reasonably incurred by them in doing so. Before proceedings can be taken under this section, however, the consent of the Minister of Agriculture and Fisheries or of the local authority must first be obtained (s. 26).

Certain additional and new powers are conferred on local authorities by s. 6 of the Act where it appears to them that it is expedient to deal with the land (comprising premises in the occupation of different persons) as one unit for the purpose of destroying rats or mice. Under this section they may without serving notices under s. 4, *supra*, themselves take such steps as

they consider necessary for the purposes. Seven days' notice must be given by the local authority to the occupier under this section, specifying the steps proposed to be taken. Section 6 (3) enables the local authority to recover as a simple contract debt in any court of competent jurisdiction (s. 7) from the respective occupiers of the premises concerned their proportionate share having regard to the work done.

Ricks of corn or other crops have been regarded as such important potential hiding places for rats that special provision has been made in regard to them.

By s. 8 of the Act the Minister is empowered to make regulations in connexion with the threshing or dismantling of any rick of corn or specified crops, in order to ensure the destruction of rats or mice escaping from them.

In the matter of finance, s. 11 enables the Minister, subject to such conditions as he may with the consent of the Treasury determine, to make grants equal to one-half of the expenditure incurred by the local authorities in performance of their functions under Part I of the Act, so far as not recovered by them under s. 7.

Section 12 of the Act defines the supervisory powers of the Minister of Agriculture and Fisheries with regard to the functions of the responsible local authorities under Part I of the Act.

The exercise of such functions must be " In accordance with any general or specific directions " by the Minister but " The validity of anything done by a local authority in pursuance of this Act shall not be called in question on the ground that it was done otherwise than in accordance with any such directions as aforesaid."

The really effective sanction is provided in the hands of the Minister by subs. (2), which enacts that where the Minister is satisfied on complaint or otherwise that any of the functions under Part I of a local authority are not being performed by the authority, he may by order empower any person named in the order to exercise those functions on behalf of the authority.

PART II
INFESTATION OF FOOD

Section 13 of the Act imposes duties on certain undertakers to give notice of the occurrence of infestation which is defined as meaning " The presence of rats, mice, insects or mites in numbers or under conditions which involve an immediate or potential risk of substantial loss of or damage to food " (s. 28).

These undertakers are persons whose business consists of or includes the manufacture, storage, transport or sale of food and they must forthwith notify the Minister of Agriculture and Fisheries in writing if it comes to their knowledge that any infestation is present in certain premises, vehicles, or equipment, or certain food or goods as defined in s. 13 (1) (*a*) and (*b*).

Similar duties are imposed on persons concerned in the manufacture, sale, repair, or cleaning of containers. It should be noted that by definition (s. 28) the expression " food " includes " Any substance ordinarily used in the composition or preparation of food, the seeds of any cereal or vegetable and any feeding stuffs for animals, but does not include growing crops." Similarly, the expression " container " includes sacks, boxes, tins, and other similar articles whilst the expression " manufacture " includes processing.

On the preventive side under s. 14 the Minister is equipped with power to give directions to undertakers to prevent or mitigate infestation. These directions may cover a wide field including (*inter alia*) :

(*a*) Prohibiting or restricting the use for the manufacture, storage, transport, or sale of food of any premises, vehicle, or equipment belonging thereto, which is likely to become infested.

(*b*) Prohibiting or restricting the acceptance, delivery, retention or removal in the course of that business of any infested food or goods.

(*c*) Requiring the carrying out of any structural works or the application of any treatment.

Under subs. (4) of this section the Minister may order a container to be destroyed if its infestation cannot be remedied by any form of treatment.

The following section (s. 15) enables appeals to a court of summary jurisdiction against a direction requiring the execution of structural works or the destruction of any food or container. Directions given under the last foregoing section requiring the executing of any structural works, or the destruction of any food, or container must include a statement of the right of appeal under s. 15 and of the time within which such an appeal may be brought.

The Minister is equipped with powers to enforce his directions under s. 16 of the Act. In the event of failure to comply with his directions under s. 14, *supra*, the Minister may by order authorize any person named in the order to take, on behalf of the person in default, such steps as the Minister considers necessary for securing compliance with that requirement, and the amount of any expenses reasonably incurred by a person so authorized in carrying out works under this section may be recovered by the Minister from the person in default. In addition the person who fails to comply with any of the provisions in Part II of the Act is guilty of an offence punishable on summary conviction by a fine not exceeding £100 in the case of a first offence. Power on the part of the Minister to delegate to local authorities is established by s. 18.

PART III

Part III of the Act deals with various supplemental matters. Section 19 provides the Minister with wide powers of regulating the destruction of pests and failure to comply with regulations made under the section results in an offence punishable on summary conviction with a fine not exceeding £100 in the case of a first offence. The consent of the Minister must be obtained before starting a prosecution (s. 26 (1)).

Section 22 of the Act deals with powers of entry. Subsection (1) of that section provides that any person authorized in writing by a local authority for the purposes of Part I of the Act or by a person empowered by the Minister to exercise functions of a local authority under Part I may " at any reasonable time " enter upon any land—

(*a*) for the purpose of carrying out any inspection required by the said Part I to be carried out by the local authority ;

(*b*) for the purpose of ascertaining whether there is or has been any failure to comply with the requirements of Part I ; or

(*c*) for the purpose of action authorized under s. 5 or s. 6, *supra*, to be taken by the local authority.

Subsection (2) affords similar powers of entry for the purposes of the requirements of Part II of the Act to a person duly authorized in writing by the Minister or by a local authority to whom the functions of the Minister under Part II of the Act are delegated.

Subsection (3) makes important qualifications upon this right of entry. Any person authorized under this section to enter upon any land must, if required, produce evidence of his authority before entering, and must not demand admission as of right to any land which is occupied unless twenty-four hours notice of the intended entry has been given to the occupier.

Obstruction is punishable under subs. (4) and compensation for damage done payable under subs. (6) of the same section.

Section 23 makes special application to aircraft and shipping. Under that section the King may, by Order in Council, direct that the provisions of the Act shall apply (subject to such exceptions and modifications as may be prescribed by the Order)

in relation to vessels or aircraft as they apply in relation to land. Part I of the Act may not, however, be applied under this section to vessels trading or going between a place in the United Kingdom, the Channel Islands, or the Isle of Man, and a place outside these territories.

Section 26, referred to *supra*, prohibits proceedings for an offence under the Act except by or with the consent of the Minister or local authority. In regard to offences committed by a body corporate subs. (2) of this section fixes legal criminal, responsibility under the Act by providing that " every person who at time of the admission of the offence was a director, general manager, secretary, or other similar officer of the body corporate or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that it was committed without his consent or connivance and that he exercised any such diligence to prevent its commission as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances."

Subsection (3) applies the position of " director " to industrial corporations under national ownership.

On the score of finance under s. 27 the Exchequer must find the following moneys :

(*a*) Any Ministerial expenses under the Act.

(*b*) Any increase in the Exchequer Equalization Grant payable under the Local Government Act, 1948, attributable to any expenditure of a local authority under the Act.

(*c*) Any research expenses of the Minister for the purposes of the Act.

Receipts by the Minister under the Act must be paid into the Exchequer.

MISCELLANEOUS INFORMATION

GENERAL PRINCIPLES ON CONTROL OF ADVERTISEMENTS AGREED BETWEEN THE C.C.A. AND O.A.I.A.C.

The County Councils Association have issued a report on discussions which the Association has had with the Outdoor Advertising Industry Advisory Committee. Attached to the report is a joint memorandum setting out certain general principles for guidance of county planning authorities and advertising agents which have been agreed by the Association and the advisory committee.

The report tells of two meetings which took place in January and April this year. At the first meeting the advisory committee's representatives said that the industry was anxious to respect the claims of amenity and to avoid erecting signs and advertisements of a kind or in places which would detrimentally affect amenities. They then referred to the advisory circular issued by the Department of Health for Scotland which they said had proved most valuable and had resulted in the evolution of a common standard throughout most of Scotland which greatly simplified the problem so far as the advertisers were concerned. In England and Wales, however, no such advice had been given by the Ministry with the result that no common standard was evolving, and the basis of treatment varied widely according to the views held by individual local planning authorities.

The advisory committee's representatives then said that they were anxious to work in close co-operation with local planning authorities but they felt that if some general principles could be agreed at national level between both sides these would be of great value to both parties.

The representatives of the County Councils' Association said they welcomed the approach made by the advertising industry which, they felt, had in the past paid too little regard to the claims of amenity. They thought that since design and siting of advertisements was largely a matter of taste it was inevitable that there should be considerable variation in the attitude adopted by different authorities, but they agreed that close collaboration between planning authorities and advertisers should be encouraged at all levels and that any general principles which could be devised should prove helpful to all concerned.

As a result of a second meeting between the Association and the advisory committee a number of general principles were agreed and embodied in a joint memorandum.

The joint memorandum has been divided into seven paragraphs. The first paragraph suggests that it would be helpful if planning authorities would consult with the Outdoor Advertising Advisory Committee before submitting to the Minister of Local Government and Planning draft orders scheduling areas as areas of special control.

The second and third paragraphs suggest the need for greater co-operation between local planning authorities and advertisers. Much time and labour could be saved if advertisers would informally consult with the planning department of the local planning authority before submitting a formal application while on the part of planning officers the memorandum suggests that when they consider that an application is unlikely to secure the approval of their committee, they should notify the applicant of any suggestions for modifications or alternative sites before placing the application before the committee.

The next two paragraphs of the joint memorandum deal with the challenge procedure. It is suggested that it would cause advertisers considerable hardship if the power of challenge were to be used indiscriminately or merely for the sake of placing existing advertisements on record. The memorandum then suggests that planning authorities should consult with the advertiser before formally challenging an advertisement with a view to agreement being reached on such modifications as will satisfy the planning authority, thus avoiding altogether the need to resort to the costly challenge procedure. It is further suggested that where a challenge is made and an application is submitted for the exact display which has hitherto existed, it would be reasonable, since the local authority know the exact location of the advertisement, to dispense with the submission of detailed plans and maps, provided sufficient information, *e.g.*, a photograph or sketch, is submitted to enable the advertisement to be indentified.

The sixth paragraph of the joint memorandum deals with general policies which may be adopted by planning authorities. It suggests that such policies should not be allowed to develop into the formulation of inflexible rules involving automatic refusals in the case of certain types of advertisement or siting. For example, an application for an advertisement to be displayed on a wall should not automatically be refused because it has been decided as a general policy to discourage such advertisements. The memorandum points out that each case is entitled to consideration on its own merits.

The last paragraph of the memorandum draws attention to the decision of the Minister of Local Government and Planning on an appeal that a condition requiring the removal of an advertisement at the expiry of the period for which permission is granted should not be attached except in special circumstances.

NATIONAL HEALTH SERVICE: PSYCHIATRIC SERVICES FOR REMAND HOMES

Consideration has recently been given by the Ministry of Health to the question whether the provision of psychiatric services for remand homes is the duty of the local authority which provides the Home or of the National Health Service. The matter is not free from doubt, but, on practical grounds, it has been decided that services of this kind should be regarded as part of the National Health consultant service. It follows that whole-time consultants would give these services at remand homes as well as in hospitals without charge, and that part-time consultants would have their liability for the services taken into account in assessing the number of half days and would thus be remunerated for them.

£1,000 MILLION FOR WAR DAMAGE

The War Damage Commission have paid out £1,000 million since April, 1941, when they made the first payment. War Damage Contributions by property owners to the Government total £198 million.

During the war some 3,420,000 buildings in Great Britain and Northern Ireland were damaged or destroyed by enemy action, including 3,160,000 houses. Over forty *per cent.* of the buildings were in the Greater London area.

Individual payments amount to £689 million—£475 million for the cost of repairs done and £214 million representing the loss in value where war damage repairs would have been uneconomic or undesirable. In addition, £270 million has been paid to local authorities for the repair of houses and for site clearance and the remaining £41 million to the Ministry of Works for the repair of houses and for public utility undertakings and roads.

Of the total payments, £705 million was for houses, £84 million for factories, £67 million for commercial buildings such as warehouses, £37 million for shops, £24 million for offices, £12 million for hotels and licensed premises and £8¼ million for churches. Greater London's share of the payments represents about sixty *per cent.*

During 1948, £149 million was paid, in 1949 £105 million, in 1950 £92 million and for the first six months of 1951 £39 million. Payments are at present being made at the rate of about £1¼ million a week.

REVIEWS

Probation and Related Measures. Available from H.M. Stationery Office. Price 22s. 6d.

As in the case of the League of Nations so also in the case of the United Nations much of the most constructive work has been done by committees and conferences in which representatives of many nations have pooled their experience, joined in free discussion and attempted to arrive at general principles which could be translated into action in relation to social problems and their solution. Almost entirely free from political issues, these discussions have often had results of great promise, and the discovery of so much common ground among members of many nations contributes towards the establishment of mutual understanding and goodwill.

This volume on *Probation and Related Measures* is a United Nations publication. It has been compiled by experts in this field of work, and it affords the means of comparing and contrasting the methods adopted in a number of countries. The treatment is exhaustive and the arrangement admirable. Sufficient historical details are given to enable readers to see how the various systems began and developed, and the information is brought well up to date, as is shown by the fact that our own Criminal Justice Act, 1948, is adequately treated.

In some countries there is no probation in quite the same sense as we understand it, but instead there is some form of suspended or conditional sentence. The question whether probation should involve the suspension of conviction, or only of sentence, has been settled in this country in favour of suspending only the punishment, but the practice varies in different countries. In some there is even a power to prescribe probation of some kind before guilt has been established, a practice which would certainly not find wide acceptance here.

However, this book sets out all the relevant factors taken into account, and the way in which the different systems work, in such a way that fair comparisons can be made and informed opinions be created. There are some valuable appendices completing the documentation of the work.

The scope of this volume has been limited in view of the fact that certain other works are in course of preparation.

Probation among adults is the chief concern of this volume because of a comprehensive survey and analysis of the treatment of juvenile delinquents which is now being undertaken. Other studies will deal with the medical, psychiatric and social examination of offenders as part of pre-sentence investigations, and with minimum standards with reference to detention (including the detention of persons awaiting trial or judicial disposition).

Club Leadership Today. By Basil L. Q. Henriques. London : Oxford University Press. Price 10s. 6d. net.

It is commonplace that few boys and girls who are active club members appear in the juvenile courts, and many people think of the clubs as places that keep young people off the streets and out of mischief. They certainly do this, but they do much more, and to read a book like this one is a revelation of the purpose, method, and atmosphere of a good club for boys.

Few people are as well qualified as Mr. Henriques to write on the subject. He has devoted most of his life to club work, he is a juvenile court chairman of long experience and he has travelled in many lands enriching his wide experience.

This book is in one sense a new edition of an existing book, but there is so much new matter that it is almost a new book. It is intended primarily for leaders and others engaged in club work, but it is also sure to appeal to magistrates, probation officers, officials of local authorities, social workers generally, and to many others who, if they have not yet taken any share in club work, want to know what is being done, by whom and in what ways.

The whole ground is covered thoroughly. There is guidance upon all questions, from the formation of a club, the choice of officers and committees and the admission of members, to details about premises, equipment and activities.

Mr. Henriques feels that the best definition of a club is that it is a home of friendship. That friendship, between leaders and members as well as among the members themselves, may take time to create, and approaches are sometimes difficult. Nevertheless, the welfare of the club rests upon it.

" Citzenship," says Mr. Henriques, " is club membership writ large. In the club the boy should come to know his duty to others and not be content with the enjoyment it offers in the way of sports and pastimes." These have their place in the club, of course, and the book deals with them in great variety. Mr. Henriques believes that the basis of all club work should be religious, and it is obvious that his own inspiration is in the religion he professes and carries out in his daily life. He is a Jew, but his chapter on religion, reverent and restrained will find acceptance also among Christians.

This is a fine book, pervaded by the author's earnestness and sincerity.

Mechanizing the Legal Office. By J. H. Burton. London : Gee & Co. (Publishers) Limited. 1951. Price 6s. net.

We have from time to time noticed some of the works issued by Messrs Gee & Co., who are we believe specially concerned in publishing for companies, so far as their publications are of interest to our readers. The present work is designed especially for the solicitor's branch of the legal profession ; it seems likely to be particularly stimulating to members of the smaller firms and (amongst our own readers) to magistrates' clerks and the clerks of the smaller local authorities. In the larger office it is probable that a good deal has already been done towards mechanization, and there will often be a member of the staff who has made a special study of it. Mr. Burton, although not a lawyer, has had long acquaintance with the lawyer's habits and requirements, and he is of the opinion that many of them could save time and money, and add to the protection they give their clients' interests, by abandoning old-fashioned office methods and relying, more than they have done, upon the specialized services given by the firms who deal in various mechanical appliances. Most of the well-known processes and machines are mentioned briefly, and some which are less well known. There is a short but useful chapter on securing economy in stationery, and another on protection against fraud by one's own staff. In regard to many of the things he mentions, Mr. Burton says the cost is small, but readers are not likely to forget that a number of small items of expenditure can add up to a good deal ; those who are spending public money, in particular, will usually do well to seek guidance, otherwise than from the maufacturers and sellers of appliances, before embarking on too much mechanization. On the other hand, it is certainly true that human labour is expensive (and can " walk out," as the machine cannot, as soon as it has learnt its job), and also that legal practitioners and their staffs have been exceptionally conservative in their office methods. There must be many who will derive advantage from reviewing what is now done in their office, in the light of Mr. Burton's book.

My Six Convicts. By Donald Powell Wilson. London : Hamish Hamilton. Price 15s. net.

The scene of the events described in this book is a large American penitentiary to which the author, a professor of psychology, was sent by the Public Health Department of the United States for the purpose of investigating the connexion between drug addiction and criminality. The title refers to six prisoners chosen by the author, who were his principal assistants in that investigation.

It is a strange story. Dr. Wilson was given a very free hand and was enjoined never to report to the executive authorities any irregularities he saw or incriminating communications he received, if he wished to gain the confidence of the prisoners and remain alive. He learned a great deal, and the lawlessness and violence that could sometimes take place in the prison seem almost unbelievable. However, his little team, which included five persistent criminals, one of them a desperate gangster, served him loyally and became remarkably efficient in work which included the giving of psychological tests. They responded to responsibility and interesting work, and the end of the book suggests that they were making good.

There is so much of American idiom and slang in the story that some readers will often be baffled to understand it, but no doubt there are many others, readers of American crime stories, and others used to seeing gangster films, who will find it easy and pleasant reading.

Dr. Powell, who is now a professor of psychology at Los Angeles State College, states " this book is not a record of the research project, it is rather a reminiscent impression of the humours, whimsies and tragedies of my six convict assistants—my world as they saw it and their world as I saw it."

LINES ON READING THAT A CERTAIN PERSON IS THOUGHT TO BE ABLE TO ASSIST THE POLICE

There's a remarkably high rate of decease
Amongst those who can assist the Police.

J.P.C.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 61.

A LORRY DRIVER IN TROUBLE

A lorry driver was charged at Appleby (Westmorland) Magistrates' Court on July 9, 1951, first with driving without due care and attention contrary to s. 12 of the Road Traffic Act, 1930; secondly, with driving a goods motor vehicle for a continuous period of more than five hours and a half, contrary to s. 19 (1) (*i*) of the Act; thirdly with driving a goods motor vehicle for continuous periods amounting in the aggregate to more than eleven hours in a period of twenty-four hours, commencing two hours after midnight, contrary to s. 19 (1) (*ii*) of the Act, and lastly, with so driving a goods motor vehicle that defendant did not have at least ten consecutive hours for rest in a period of twenty-four hours calculated from the commencement of the period of driving contrary to s. 19 (1) (*iii*) of the Act.

For the prosecution, it was stated that defendant was engaged to drive a three ton goods vehicle and deliver a load of vegetables from Boston, Lincs., to Glasgow market, a distance of 307 miles. Defendant was given £8 by his employer for lodgings and expenses, and told to leave Boston on the Saturday in order to be in Glasgow in good time for the opening of the market on the Monday morning, but he disregarded these instructions and did not leave Boston until 1.30 *p.m.* on the Sunday. He arrived in Glasgow at 6.30 *a.m.* on Monday, thus travelling 307 miles in seventeen hours. At 10.30 *a.m.* on the same day, after unloading his vehicle, he left Glasgow on the return journey, and at 4 *p.m.* he ran into two Islands on The Sands, Appleby, a straight and wide A66 road, and mowed down the "Keep Left" signs for no apparent reason as no other vehicle was involved in any way. From Glasgow to Appleby is 125 miles. A police constable witnessed the accident from the nearby police station. The defendant was found to be uninjured and perfectly sober but appeared to be almost asleep on his feet, and his explanation was that he must have dozed off. An examination of the vehicle showed it to be mechanically sound.

Defendant, who did not appear but wrote pleading guilty to all the offences, admitted contravening his employer's instructions by not leaving on the Saturday night, and explained that previously he had not been earning much money so he intended keeping the lodging money advanced to him.

Defendant's record sheet showed that he had driven for a continuous period of more than five hours and a half on the night of Sunday/Monday, and the justices found all the charges proved. They fined defendant £2 and endorsed his licence on the first charge, and fined him £1 on each of the other charges.

COMMENT

Section 19 of the Act contains stringent provisions as to the time during which drivers of public service and goods vehicles may remain continuously on duty.

Subsection 4 of the section provides that a person shall not be liable to be convicted under the section if he proves to the court that a contravention of the section was due to unavoidable delay in the completion of any journey arising out of circumstances which he could not reasonably have foreseen.

Offences under s. 19 are punishable by s. 113 (2) of the Act with a fine of £20 in the case of a first offence, and three months' imprisonment or a fine of £50 in the case of a second or subsequent offence.

(The writer is indebted to Mr. Geo. H. Heelis, clerk to the Appleby (Westmorland) Justices, for information in regard to this case.)

No. 62.

AN UNREGISTERED ARCHITECT

At Oxford City Magistrates' Court on July 31 last, a defendant was summoned at the instance of the Architects' Registration Council for practising under a name, style or title containing the word "Architect" when he was not a person who was registered as an architect under the Architects Registration Acts, 1931 to 1938, contrary to the provisions of s. 1 of the Architects Registration Act, 1938.

The defendant, a man of considerably good standing in the City and who for many years past had been employed by or on behalf of the Military Authorities, was at the instance of the Council sent a letter by a private inquiry agent following a newspaper report, which gave an account of evidence which the defendant had previously given before magistrates, and in which he was described as an "Architect and Surveyor."

The letter sent to him stated that the writer was in need of advice and possibly assistance with regard to architectural services, having recently acquired property in the City which needed some structural alterations. To this, the defendant replied stating that he would be pleased to act for his correspondent in any way he might require, but suggesting that he should make an appointment before calling as he was out of town a good deal on Government inspections. This letter was on printed notepaper from the defendant's private address and in the left hand corner following the defendant's name there was printed M.Inst.P.C.S., and underneath the words "Architect and Surveyor."

Evidence was given by the Registrar of the Council to the effect that the defendant's name did not appear in the Register of the Council.

The defendant pleaded not guilty, and in evidence stated that whilst he admitted writing the letter, and on the notepaper in question, he maintained that he had served for five years as an articled pupil from 1901 and was fully qualified as an architect. In furtherance of this he produced to the court testimonials from the firm to which he had been articled, but no proof by way of certificate as to his qualifications. He further stated that he had given up all private practice in 1911 and had since been employed in his professional capacity in the way set out above.

He contended that as he only occasionally acted in a private capacity in his spare time it was not necessary for him to hold a certificate of registration under the Acts of 1931 to 1938.

The court held that s. 1 of the 1938 Act was absolutely prohibitive and that the defendant had, in writing the letter above referred to upon such headed notepaper, practised in a name, style or title containing the word "Architect" and that none of the provisos to s. 1 applied to him.

A penalty of £5 was imposed, whereupon the defendant asked whether he was forbidden from doing any private work on occasions as he was accustomed to do unless he was duly registered. He was informed by the Clerk that, whilst it was no part of the Court's functions to advise him, the case of *Bellerby* v. *Heyworth* (1910) 74 J.P. 257, seemed to show that this was not forbidden, provided he did not contravene the section again by using a forbidden title.

COMMENT

Section 1 of the Act of 1938 prohibits a person from practising or carrying on business under any name, style or title containing the word "Architect," unless he is a person registered under the Architects (Registration) Act, 1931.

The section contains a number of exceptions to this general prohibition which should be perused carefully by anyone contemplating action which might involve an infringement of the section.

Section 3 of the Act of 1938 provides that a person contravening s. 1 shall be liable on summary conviction to a fine of £50 and to a further fine not exceeding £10 for every day on which the offence continues after conviction.

It is to be observed that the prohibition is against practising or carrying on business under any name, style or title containing the word "Architect," unless registration has been effected, and it is to be noted that s. 4 (2) of the Act of 1938 provides that a person shall not be treated as not practising by reason only that he is in the employment of another person.

Brown v. *Whitlock* (1903) 67 J.P. 451 is authority for the proposition that it is a question of fact as to whether a defendant has so practised as to contravene the provisions of s. 1. That case concerned a dentist whose name was not on the Dentists' Register but the judgments of Lord Alverstone, C.J., and the other members of the Divisional Court which decided the case make it clear that similar considerations would apply in the case of an architect.

Bellerby v. *Heyworth*, *supra*, to which the learned Clerk referred at the hearing, was a House of Lords decision, and arose from a dispute between three persons practising dentistry in partnership who were neither registered under the Dentists Act nor were they legally qualified practitioners.

Lord Loreburn, L.C., in the course of his speech, said: "The Act itself does not forbid anyone from practising dentistry; but it only forbids the assumption of name, title, addition or description."

The meaning of the words "practising architect" was considered by a King's Bench Divisional Court in 1945 in *R.* v. *Architects' Registration Tribunal, Ex parte Jaggar* [1945] 2 All E.R. 131. The applicant, who held a position of Borough Engineer and Surveyor to an important City Corporation, applied to the Architects' Registration Council for registration but was refused. He thereupon appealed to the Tribunal of Appeal, who dismissed the appeal and, in arriving at their decision, acted upon a test which had been laid down previously by them and which contained the following definitions: "An 'architect' is one who possesses, with due regard to aesthetic as well as practical considerations, adequate skill and knowledge to enable him . . . to arrange for and supervise the erection of such buildings or other works calling for skill in design and planning . . . 'practising' . . . means: Holding out for reward to act in a professional capacity in activities which form

at least a material part of his business. A man is not practising who operates incidentally, occasionally, in an administrative capacity only, or in pursuit of a hobby."

These definitions were approved by the Divisional Court. There is no definition of the word " architect " in the Architects (Registration) Act, 1931.

(The writer is indebted to Mr. John Broughton, clerk to the Oxford City Justices, for information in regard to this case.)

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

STATUTORY NUISANCES

I was interested to read the comment appended to the case appearing under the above heading in your issue of August 25, at p. 539, as with great respect I do not agree therewith.

We are not informed of the exact nature of the repairs required in these two cases, but it can probably be assumed that there was here no question of injuries to any adjoining houses caused by the defects complained of ; there could, therefore, I would submit, be no question of any common law private nuisance, as such an action can never lie against a landlord in respect of lack of repair. No doubt the condition of the houses was such as to be " prejudicial to health," and nuisance abatement proceedings under the 1936 Act could therefore be properly brought, but there is no need to pray in aid *Betts* v. *Penge U.D.C.* (1942) 106 J.P. 203, as there could here have been no private nuisance.

I am further of the opinion that in so far as *Betts'* case decided that a private nuisance (*not* " prejudicial to health ") was a statutory nuisance under s. 92 (1) of the 1936 Act, a point which I submit was not part of the *ratio decidendi* of the case, that case was wrongly decided. As such a view was contrary to the line of former authority ; moreover it would not appear to have been the intention of Parliament that a mere *private* nuisance should be capable of being abated by a local authority under the section.

I have elaborated these views, giving authority therefor, in an article published in the issue of *The Law Journa* for October 27, 1950, at p. 591 (100 L.J.N. 591).

Yours faithfully,
J. F. GARNER,
Town Clerk.

Municipal Offices,
Beech Hurst,
Andover.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CARAVAN SITES—APPEAL AGAINST REFUSAL—MINISTER'S VIEW

I am sure that you will be interested in a decision which my council have recently received from the Ministry of Local Government and Planning in connexion with an appeal against the refusal by the council, acting on behalf of the Berkshire county council, to permit land to be used as a caravan site for residential, recreational, and touring purposes. It was accepted by the council that the land was suitable for building, but the appellants claimed that in present circumstances it was not possible to develop the land as a high class residential estate, and they asked to be allowed to develop the land as a caravan site in the meantime. They stated that they were willing to spend up to £3,000 in laying out the land and providing main drainage, lavatory blocks, and a water supply. They contended that the site was well screened, that there was a shortage of caravan sites, and that the use would not lead to any traffic difficulties as it was probable that most of the caravans would be more or less permanent residences.

The council refused permission on the grounds that the proposal was one to introduce sub-standard living accommodation in an area of permanent residences and that the development would be prejudicial to the locality. The main point of the council's case, however, was that they had made, and would continue to make, provision for caravans on municipal sites, and they were prepared also to let individual plot owners live in caravans on their land until houses could be built. The council stated that this would apply to the appeal site if it were sold in building plots.

The Minister has now stated that he sees no sufficient reason to differ from the council's view and accordingly has dismissed the appeal.

I suggest that the decision is one of some importance to all local authorities who have to deal with the caravan problem. It seems that the Minister is prepared to accept the point that the local authority is best able to make provision for caravan sites in its own area.

The Maidenhead council accept responsibility for providing caravans sites for people who live or work in the district, but are not prepared to have an influx of people from outside the borough coming into the town and living in caravans. So long as the present housing shortage persists, families will have to live in caravans, and local authorities ought to make reasonable provision for such cases. In Maidenhead it has been the council's experience that sites provided for such families are used temporarily, the families finding permanent accommodation either in a council house or other properties in due course and releasing sites for other families who have insuperable housing problems.

Yours faithfully,
STANLEY PLATT,
Town Clerk.

Guildhall,
Maidenhead.

PERSONALIA

APPOINTMENTS

Mr. Leslie Walsh has been appointed stipendiary magistrate for the city of Salford.

Miss Constance M. Larner, a probation officer at the Beacontree magistrates' court for the past six years, has been appointed a senior probation officer. Miss Larner is thirty-three years of age and before taking up her present appointment she served for five years in the Metropolitan Police Force. She is succeeded by Miss M. L. Richardson, a probation officer in the city of Salford.

PRESENTATION

Mr. G. H. Brown, clerk to the justices of the petty sessional division of Trowbridge, and the petty sessional division of Whorwellsdown, has just completed forty years' service in this capacity. He has been presented with an address and a personal gift by the justices.

RETIREMENTS

Mr. George Edward Scott, clerk to the Bolton justices and clerk to the petty sessional division since 1925, is to retire at the end of September. His place will be taken by his son Major Edward Thomson Scott, M.B.E.

Mr. A. E. Barker, city coroner for Bristol since 1911 and prior to that date deputy coroner for nineteen years, is to retire.

OBITUARY

Mr. John Brown Sandbach, K.C., died recently at his home at Northwood, Middlesex. He was seventy-two. Called to the Bar by the Inner Temple in 1902, he joined the Northern Circuit. In 1925 he took silk and the following year he was appointed a metropolitan magistrate. He retired in 1947.

NEW COMMISSIONS

HUNTINGDON COUNTY

Richard Cox, The Limes, Somersham.
Lady Doris Shepperson, Upwood House, Ramsey, Huntingdon.

LYME REGIS BOROUGH

Alfred Francis King, The Alcove, Marine Parade, Lyme Regis.

OXFORD COUNTY

John Alfred Ansell, Middleton Stoney, Oxon.
Major Robert Arnold Paul Butler, Lower Farm, Ramsden.
Oliver George Harrison, Over Norton, Chipping Norton, Oxon.
Mrs. Helen Margaret Huskinson, Old Parsonage House, Stanton Harcourt.
Mrs. Enid Maud Lane Fox, The Fox, North Aston.
Hedley Morewood Purser, Thame, Oxon.

STALYBRIDGE BOROUGH

Harry Jones, 6, West Avenue, Stalybridge.
John Porter, 84, Lindsay Street, Stalybridge.
Herbert Slack, 25, Lower Lord Street, Stalybridge.

COLOURABLE TRANSACTIONS

"I have heard of your paintings, too, well enough," says Hamlet to Ophelia, in his tirade against women; "God hath given you one face, and you make yourselves another." This outburst of misogyny is recalled on the publication, by the Central Office of Information, of the recent Social Survey entitled *Expenditure on Hairdressing, Cosmetics and Toilet-Necessities*. The Report estimates, for 1949, an annual expenditure under these heads of the enormous sum of £120 million, three-quarters of which was spent by women. "Expenditure on cosmetics and toilet-necessities was most marked for 'face-preparations'." It seems that "saving face" is a practice by no means confined to the Far East.

The habits referred to in the prosaic form of a twentieth-century statistical report were already well-established at the dawn of recorded history. Alabaster vases for unguents have been found in Egyptian tombs of the First Dynasty, dating back to 3,500 B.C. and stibium pencils (for darkening the eyebrows) were used in the Eighteenth Dynasty, *circa* 1,500 years before the Christian Era. Egyptian ladies of all periods specialized in the art of increasing the apparent size of the eyes, painting the lower lids green and the upper lids, lashes and eyebrows black by the application of *kohl*, a product of antimony.

Nor was the custom confined to Egypt alone. The use of cosmetics is referred to in the Old Testament in more than one place. "When Jehu was come to Jezreel, Jezebel heard of it; and she painted her face and tired her head and looked out at a window" (II Kings, ix, 30). Ladies of her rank also used henna to dye the nails of the fingers and toes and to stain the palms and soles; this probably is the explanation of the apparent fastidiousness of the dogs that, later, devoured her body; "And they went to bury her, but they found no more of her than the skull and the feet and the palms of her hands" (*ibid.*, 35).

In Britain, as in the rest of Europe, cosmetics have been used from the earliest times. A Tudor recipe recommends the rubbing of the face with plenty of wine, and Mary, Queen of Scots, is even said to have taken wine-baths. In this historical connexion it is significant to note the influence of women, long before their enfranchisement was thought of, upon law-making by the men. Sumptuary laws, to keep down and regulate extravagant and luxurious practices, have been enacted and enforced in many periods, from the early times of the Draconian Code in Sparta and of the Twelve Tables in Rome; in England, in particular, during the reigns of Edward II and Edward III, in the thirteenth and fourteenth centuries, and notably during the Puritan Protectorate of the 1650's. Yet few or none of these male legislators cared or dared to intrude into or interfere with the mysteries of the feminine toilet. Here is interesting matter for the sociologist.

In modern English legislation the subject has hitherto attracted little attention, save in connexion with revenue matters. The far more important social aspect has been almost entirely neglected. The recent appointment of a Royal Commission, to inquire into the law relating to marriage and divorce, offers a unique opportunity for examination of the broader implications of the subject.

The law should keep itself abreast of present-day developments, and it is submitted that the widespread habits disclosed by the recent Social Survey render essential and urgent some revision of accepted practice and procedure in courtship and the preliminaries to marriage. It is obviously absurd that a man contemplating the acceptance of the onerous obligations of matrimony should exercise a lesser degree of care and caution than one who is considering some far less important transaction which will bring him into legal relations with another party.

Regarded, first, from the point of view of the conveyancer, the question resolves itself into the comparatively simple problem of devising a form of Preliminary Inquiries before Engagement, and appropriate questions will readily suggest themselves to every lawyer for the purpose of guarding against latent defects which inspection may not have revealed. We may take as a basis those generally in use by an intending purchaser of leaseholds; only slight adaptation of the form is required to ascertain, for example, the length of the term of years already expired; what repairs, if any, have been effected to the exterior; what decorations have been carried out, and when; what development, if any, has taken place; what restrictions and reservations apply; whether any allowance is claimed for fair wear and tear and (perhaps most important) what is the insurance cover. Inaccurate or misleading replies, if amounting to misdescription, should have the usual consequences.

Alternatively the matter may be considered as analogous to a contract for the sale of goods, particularly in connexion with the common-law principles of misrepresentation by conduct. In contracts of sale and purchase the mere disguising of the quality, or the adulteration, of an article, even without express words of description, constitutes sufficient misrepresentation to render the contract voidable at the instance of the party deceived; "the seller of an article presenting a certain appearance to the senses of the purchaser is deemed to state, in so many words, that the article is in fact what it purports to be, and that there has been no concealment or covering up of defects, or other device or manoeuvre, whereby the outward semblance of the article is made to lie as to its substance and reality" (*Halsbury's Laws of England*, 2nd edn., Vol. XXIII, at p. 22, referring to *James* v. *Bowden* (1813) 4 Taunt. 847). So much is settled law; one might well imagine that in marriage contracts, *a fortiori*, in relation to such material points as age, skin-texture and facial-appearance, deceptions and concealments by means of devices like rouging, powdering, hair-dyeing and "face-lifting" should entitle the disappointed husband to take proceedings for nullity when he discovers the unadorned truth. Can it be seriously argued that the spurious quality of a horse's teeth, which have defied superficial inspection before purchase, constitutes a fraud more reprehensible than the artificiality of a woman's dentures, which have passed muster during the formalities of courtship? May not a synthetic complexion amount to misrepresentation as deliberate as *ersatz* butter or meat?

Lest it be thought that the analogy is too fanciful and far-fetched, reference may be made to *The Art of Perfumery*, published by one G. V. Septimus Piesse in 1879. The example that he quotes shows how persuasively it may be argued that some of the most benevolent attempts at legislation are enshrined in Bills which never progress beyond their first reading. In 1770, according to this writer, a Bill was introduced into the English Parliament containing the following drastic provision: "That all women of whatever age, rank, profession or degree, whether virgins, maids or widows, that shall from and after such Act impose upon, seduce and betray into matrimony any of His Majesty's subjects by the scents, paints, cosmetic washes, artificial teeth, false hair, Spanish wool, iron stays, hoops, high-heeled shoes, bolstered hips, shall incur the penalty of the law in force against witchcraft and like misdemeanours, and that the marriage, upon conviction, shall stand null and void."

History has unfortunately failed to record the name of the great Parliamentarian who was responsible for introducing this measure, but it may safely be inferred that he was a member of that most oppressed, exploited and down-trodden class of the community—the married men.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Date of offence uncertain—Form of charge.*

I shall be glad if you will kindly give your opinion on the following point.

The query is that when a person is charged with breaking into a house, shop or other building, and as in normal cases the prosecution obtain evidence to show when the property was left unoccupied, our clerk to the court maintains that it is not proper to say that a house was broken into, for example, between April 7 and 8, 1951.

When it is known by the prosecution that the occupier of a house or shop, etc., left his premises say at 7 *p.m.* on April 7 and returned at 8 *a.m.* on April 8 to find his premises have been forcibly entered and property stolen, the clerk even then will not agree to a charge being framed on those lines, and insists that the day before the 7th and the day after April 8, shall be included, and that the charge shall be worded "On a day unknown between April 6 and 9, 1951 . . . "

We have never encountered such a query before, and the senior officers of this division, including the superintendent, maintain that the proper procedure is for evidence to be given and the charge to be framed on the date the premises were left unoccupied and the date the aggrieved person revisited same.

In a recent case when a man was charged with breaking into the office of a cinema, the charge was framed on the lines laid down by the magistrates' clerk, *i.e.*, a day before and a day after the known dates the premises were left unoccupied. When the prisoner's statement was read out in court it showed that he broke into the premises at two o'clock on a particular morning between those two dates, whereupon the clerk of the court then asked for the charge to be amended so that the date of the breaking and entering was as given in the prisoner's statement.

It is interesting to note that in the majority of the indictable cases which are committed for trial, the learned clerk of the peace and barristers who are responsible for framing the counts in the indictment, do not adopt the same procedure as the local magistrates' clerk.

We are quite satisfied in our own minds that larceny cannot be a continuing offence, nor for that matter can malicious damage and other serious indictable offences, and where the prosecution know that an offence has been committed between two certain days, we feel we are justified in framing the charge accordingly.

We shall therefore be glad if you will kindly give us the benefit of your experience in this matter. SHUT.

Answer.

There is no interval of time between one day and the next, so "between April 7 and 8" is hardly correct. Where, however, the time of an offence can be fixed as in the question we think it should be alleged as having been committed "between 7 *p.m.* on April 7, and 8 *a.m.* on April 8." This is precise, and we can see no objection to it; indeed we prefer it to the form suggested by the learned clerk.

It is, of course, correct to allege an offence on a date unknown, between certain dates, where the period involved is such that no more precise time can be stated (*Archbold*, 32nd edn., p. 47).

2.—Criminal Law—*Larceny—Washing pegged on to clothes-line.*

A person enters a garden and steals washing which is pegged to a line in the usual manner, the line is nailed to posts which are embedded in the earth. He is charged with larceny and by way of a defence, he raises s. 1 (3) of the Larceny Act, 1916, which says in effect, that nothing attached to the realty can be stolen by the person who at once severs and carries away the thing in question unless the thing is expressly provided for in the Act.

In the 81st. edn. of *Stone*, p. 1497, note *h*, there is reference to a conviction for stealing a copper sun-dial fixed to the earth by means of a wooden post—this conviction, no doubt, being based on the fact that metal is specifically provided for in the Act (s. 8). This raises the implication that had the sun-dial been, say, a cloth flag, being nailed to the post, and being severed and carried away in the same act, no larceny is committed. I see the possibility of this reasoning being applied to the point I now raise. I would therefore like to have your opinion on the following:

(*a*) Is it, in your opinion, reasonable to hold that washing pegged as described above, is attached to the realty?

(*b*) If so, would you agree that such a person should not be convicted of larceny?

(*c*) If so, can you suggest any criminal proceedings that could fairly be taken against such an offender, other than being found on enclosed premises, etc.. I have in mind the Justices of the Peace Act, 1360. SCO.

Answer.

In our opinion a charge of simple larceny can be entertained. The washing is pegged on to a line and is not itself attached to the realty at all. There is no need to sever the clothes, but only to remove the pegs and remove the clothes from the line. That surely is not severance from the realty.

3.—Dog—*Dangerous—Owner disposes of dog before service of summons—Can order be made?*

A is charged with being the owner of a certain dangerous dog which was not then, nor now is, kept under proper control contrary to s. 2 of the Dogs Act, 1871. Between the time of the offence and the service of the summons A has disposed of the dog to a new owner residing out of the jurisdiction of the petty sessional division. In the event of the charge being proved can the justices under the circumstances order either that the dog be kept under control or destroyed in view of the fact that A is not now the owner of the dog. SWF.

Answer.

If the ownership of the dog has been genuinely changed, and the present owner is outside the jurisdiction, we do not think the order can be made. *See* a question and answer at 112 J.P.N. 173.

4.—Highway—*Bridleway—Suggested longitudinol fence.*

The plan enclosed herewith shows a public bridleway within the borough coloured in red. Part of the bridleway is metalled, the metalled portion thereof extending for the whole length of the way, but not for the whole width. The width of the metalled part varies from six to eight feet. My council regard themselves as responsible for the maintenance of this bridleway. It will be observed from the plan that concrete posts have been erected at various positions along the way to prevent use by persons other than pedestrians and cyclists. The way is extensively used by cyclists, and is also used as a means of access and egress from the properties which abut on the western boundary thereof. As a result of the extensive use of the way by cyclists, pedestrians are often put to some danger. It has been suggested that the metalled portion of the bridleway should be widened to include the whole width between the fences, and that a fence should be erected down the middle of the bridleway with the object of confining cyclists to the use of one half of the widened way, and pedestrians to the other half.

It would appear that the erection of such a fence would be an obstruction and actionable at common law. Additionally if the suggestion were adopted, the bridleway would in fact be reduced to the status of a footpath for at least one half of its width.

Your opinion is therefore sought at to whether:

(1) The fence as above-mentioned can be erected,

(2) There is any other way of securing the desired object of separating pedestrians from cyclists. AYO.

Answer.

We have sometimes advised that a local authority should take a risk, in erecting safety railings and the like, where statutory authority was not available but nobody would be the worse. We cannot so advise here. Pedestrians are plainly entitled to use the whole width of the bridleway; the suggested railing would be quite illegal, and any person injured by colliding with it would have a cause of action. The separation of pedestrians from cyclists cannot, in our opinion, be effected.

5.—Highway—*Status of old road—Whether repairable by council.*

There is a street in this district which was developed on both sides for half its length over thirty years ago; at that time the council made up that part of the street under the provisions of s. 150 of the Public Health Act, 1875, and recovered the whole of their expenses from the owners of property fronting the street. In 1938 the remainder of the street was developed on both sides, and as this part of the road is in a bad state the council are desirous of having it made up and propose to use their powers under s. 150 in order to achieve this. Some of the frontagers contend that the street was in existence before 1835, and maintain that it is a highway repairable by the inhabitants at large. The council have scrutinized ancient maps and collected all available evidence in order to determine the status of this street, but after fully considering these they have decided that the street in question cannot be included in the list of streets prepared (*vide* s. 84 of the Public Health Act, 1925), which are repairable by the inhabitants at large. Before proceeding under s. 150, however, the council would prefer to have the status of the street determined conclusively. Could you advise procedure? A. PONY.

Answer.

We can see that it would be helpful, but cannot advise any useful procedure. We do not think the council could get a declaratory order or judgment in the High Court, because of the difficulty of serving all persons who might be adversely affected. Moreover, if the council attempted to secure a declaration to the effect that the street was not a highway repairable by the inhabitants at large, they would be in the difficult position of having to prove a negative. By proceeding in the normal way, on the assumption (justified on the information available so far) that the street is not already a highway repairable, they throw the burden of proof upon their opponents.

6.—Local Authorities—*Legal proceedings—Authority to institute or appear.*

The case of *Bob Keats, Ltd.* v. *Farrant* noted at 115 J.P.N. 247 and reported at [1951] 1 All E.R. 899, raises a number of points of interest to clerks of local authorities. In that case the divisional court appears from the reports to have decided that it is not sufficient for a district council merely to resolve that certain proceedings be taken; they must also by resolution authorize an officer to institute those proceedings. The points which I suggest are still not completely clear, and on which I would welcome your views, are:

1. If a resolution is passed by a local authority in similar terms to the resolution in *Bob Keats, Ltd.* v. *Farrant* and the clerk of the local authority is a solicitor has he *qua* solicitor any power to institute those proceedings, *i.e.*, lay the necessary information? My own opinion is that the answer to this is in the negative.

2. Assuming that it is intended that the clerk or some other officer of the local authority shall represent them in the proceedings in question, is it necessary for the resolution so to state?

3. Would the answer to 2 be the same if the clerk or other officer in question is a certificated solicitor?

4. Is it correct to assume that s. 277 of the Local Government Act, 1933, is the authority under which a local authority may resolve that an officer shall "institute" proceedings and, if so, can a committee of the authority to which, for example, the authority have delegated "all their functions under the National Assistance Act, 1948, except the power to borrow money or to levy a rate," by resolution effectively authorize an officer to institute proceedings under the last mentioned Act? APA.

Answer.

1. We agree with your view.

2. Yes.

3. Yes, deciding that the council will institute or defend proceedings is one thing; authorizing a member or officer to do so, or to appear, is another. It was, apparently, not realizing this which led to failure in *Bob Keats, Ltd.* v. *Farrant, supra.*

4. Both powers can in our opinion be delegated to a committee.

7.—Lunacy—*Power to enter premises forcibly—Lunacy Act*, 1890, *s.* 14, *etc.*

At 55 J.P.N. 141, you advised that the Lunacy Act, 1890, did not authorize the relieving officer to break open the doors of a house in order to execute a justice's order. Do you still adhere to this view? It seems the practice of duly authorized officers to break in where this is the only way to carry out their duties under s. 14 (2), or—independently of any justice's order—under s. 20 of the Lunacy Act, 1890.

Has a justice any power to break into a house for the purpose of examining an alleged person of unsound mind under s. 17 of the Lunacy Act, 1890? If neither a duly authorized officer nor a justice has power to enter premises forcibly for the purpose of these sections, would they, if they did so, be entitled to protection against civil or criminal proceedings under s. 330 of the Lunacy Act, 1890, assuming that they did not act in bad faith or without reasonable care? SAB.

Answer.

The Lunacy Act, 1890, was amended by the National Health Service Act, 1946, but the same questions still arise, and we still hold the view expressed at 55 J.P.N. 141, for the reasons there stated. We do not think either a justice or an officer is empowered to break doors, and it seems doubtful whether s. 330 would provide protection, because it is certainly arguable that it is not taking reasonable care to take such a risk of committing an act, which, if we are right, is quite illegal.

8.—Magistrates—*Practice and procedure—Action to be taken when justice or clerk and certain other persons are charged with other than a trivial offence before the bench with which they are connected.*

I should welcome your advice as to what should be done if one of the following is prosecuted for an offence committed within the jurisdiction of the court with which they are connected:

1. (*a*) A justice of the peace.

(*b*) A close relative of a justice of the peace (*e.g.* wife or son).

(*c*) The justices' clerk or a member of his staff.

If it is considered that it would be advisable for the case to be dealt with by a neighbouring petty sessional division what is the position if:

2. (*a*) The prosecutor objects (*e.g.*, on grounds of additional expense or inconvenience) to the case being transferred to a neighbouring division, or

(*b*) No neighbouring division will consent to accept the case.

Please assume that the offence is of more than a trifling nature. Kindly quote any authority there is for taking such a case out of the normal venue. J. SAL.

Answer.

1. (*a*) and (*c*) If any other summary court has jurisdiction the matter should be tried by that other court. If, as may arise in the case of a borough court, there is no alternative court the case must be tried by the same bench unless the charge is an indictable one. In that event it should be committed for trial.

(*b*) As for (*a*) and (*c*) if the relative is known to the other justices who would be sitting. If not there is less reason for making special arrangements although to do so would always avoid any suggestion that the defendant was receiving favourable treatment because of the relationship.

2. (*a*) He should be told that his difficulties are recognized but that, in the interests of justice, it is considered necessary that the transfer should be made.

(*b*) A neighbouring court which has jurisdiction must, in our view, accept the case and could be compelled, if necessary, by *mandamus* to do so.

See a note of the week at 111 J.P.N. 17 in which remarks by the Lord Chief Justice in a case where a clerk was charged are quoted, and, for more ample discussion, Lord Justice Tucker's report upon a case at Aberayron, Cmd. 7061, and our short article at p. 369, *ante*.

9.—Master and Servant—*Servant occupying cottage in grounds rent free—Refusal to leave—Summary ejectment.*

L, the owner of a guest house, which was adjoined by a large kitchen garden, employed T some twelve months ago as a gardener. Under the terms of the employment, T was to receive £4 10*s.* per week as wages, and the right to occupy the cottage in the grounds of L's premises, free of rent or any other charge. In addition to his wages, T was to receive a further sum of ten *per cent.* of the value of all vegetables sent from the garden to the guest house. T proved an inefficient, surly, and impertinent employee and L was compelled to terminate his employment by giving T one week's notice, which expired early this month. T refused to vacate the cottage and on L's instructions we served a notice to quit upon T calling upon him to quit and deliver up possession of the cottage *which he held as tenant thereof* on the 4th instant, or at the end of the week of *his tenancy* which would expire next after the end of one week from the service of the notice. It seems to us now that the tenancy was a tenancy at will and that the tenant is not entitled to the protection of the Rent Acts. Would the landlord be entitled to instruct a certified bailiff forthwith to enter into the cottage and to eject the tenant, his furniture, and his family therefrom? ABU.

Answer.

It is a pity that you served notice stating that T had been tenant: such a notice does not, upon the case law, of itself create an estoppel, but it is likely to put into T's head an inflated idea of his status. The query seems to show a further misapprehension in speaking of a tenancy at will. A tenancy at will is not necessarily outside the Rent Restrictions Acts: *Chamberlain* v. *Farr* [1942] 2 All E.R. 567—perhaps, however, s. 12 (7) of the Act of 1920 is what you have in mind. On the facts here, we should say that T never was a tenant; *see* Lord Goddard, C.J., at p. 202 H of *Ramsbottom* v. *Snelson* [1948] 1 All E.R. 201. On this view, the misconceived notice to quit could have conferred no new rights upon him, from the end of his service he was and is a trespasser, and should be put out without more ado: *Butcher* v. *Poole Corporation* [1942] 2 All E.R. 572. It is usually wise, though not essential, to employ a bailiff for this purpose, because a bailiff is skilled in using no unnecessary force.

10.—Private Street Works—*Public Health Act*, 1875, *s.* 150—*Street to be made up for part of width.*

The council are considering the making up of a portion of a certain street in the borough in sections and difficulty is presented regarding one section. Reference is made to the plan attached hereto, from which it will be seen that the road falls more or less naturally into four sections. On the lower section which is indicated by the capital letters A and B, difficulty arises owing to the fact that it is proposed to make up this section over part of its width only. This portion of the street is bounded on the one side by a row of terrace houses (A) and on the other side by a grass verge which slopes away at a steep angle down to the back gardens of houses in a street at a lower level. Owing to the

nature of the land on this side, it is not possible to get any clear indication of the exact boundary between the grass verge and the street. The houses at A are in separate ownership, while the land at B is believed to be in single ownership although this point has not yet been confirmed.

The land at B is sufficiently large to take a reasonably sized dwelling-house which could be afforded access to the made-up street although, as far as is at present known, there is no intention that such building should take place. The specification contemplated by the council is for a footpath in front of the houses at A and a carriageway extending approximately three-quarters of the distance between the said houses and the commencement of the grass verge at B.

The problem is whether in the event of the making-up being carried out in accordance with this specification, the owner of the land at B could be called upon to make a contribution in common with the frontagers on the other side.

I have been unable to trace any authority directly on this point although I have given consideration to the cases of *Wakefield Urban Sanitary Authority* v. *Mander* (1880) 44 J.P. 522 and also *Clacton-on-Sea Local Board* v. *Young* (1895) 59 J.P. 581, the latter being a case under the Private Street Works Act, 1892, and I would very much appreciate your observations on the problem which I have raised.

A. ELVED.

Answer.

We also have been unable to find any better judicial guidance. As you point out, *Clacton-on-Sea Local Board* v. *Young*, *supra*, arose under the Private Street Works Act, 1892, and the court distinguished the language of that Act from the language of s. 150 of the Act of 1875. Your letter suggests that what is now to be done is all that will be done, *i.e.*, that the strip on B's side is to be left in its natural condition, and not made up by a later operation. If so, we should be inclined, applying Grove, J.'s, maxim in *Wakefield, U.S.A.* v. *Mander*, *supra* (*qui sentit commodum debet sentire at onus*) to say that B, despite the intervening unmade strip, will abut on the made-up portion, and to charge him accordingly. We cannot say that we thus advise with confidence, but this course seems to accord with the merits : after all, the *Wakefield case* is seventy years old, and there seems no strong reason against reconsidering it in the light of modern methods of making up streets, or of facts different from those before the court in that case.

11.—Private Street Works—*Width of carriageway and footway—Single footway.*

Byelaws with respect to new streets permit a new street to be laid out to a width of twenty-six feet including one five foot footway, provided, *inter alia*, that there are no buildings on one side of the street and that the land on both sides is in the same ownership. A planning scheme operative from 1937 permitted a new street of a minimum width of twenty-four feet, the number of footways not being specified. In 1927 a local authority approved a new street of a width of twenty-six feet with houses on one side, and private tennis courts on the other. In 1946 the local authority approved erection of houses on land previously occupied by tennis courts. Street not declared a " new street " for purposes of planning scheme or byelaws. No action taken to increase width of street. Local authority now desire to make up street under s. 150, Public Health Act, 1875.

The local authority appear to have no power to relax the requirements of the byelaws and the Minister no power to sanction any relaxation. The byelaw width for a street developed on both sides is thirty feet including two five foot footways.

Your opinion and advice are sought on the following points :

(*a*) If the local authority decide to make up the street with a sixteen foot carriageway and two five foot footways what would be the effect of any objection by the frontagers.

(*b*) Would such action by the local authority prejudice their right of recovery of expenses.

(*c*) Generally. AVIATOR.

Answer.

We agree that a local authority has not, with certain exceptions not here relevant, power to waive its own byelaws, and the scheme of 1937 (which may have varied the byelaws as from 1937) is not relevant to what happened in 1927. Nor are the byelaws relevant to what is now to be done. Whatever might have been done in 1946, the position now is that the council take the street as they find it, in regard to over-all width, but by virtue of s. 35 of the Public Health Act, 1925, if in force, can vary the width of carriageway and footway, but not so as to increase the burden on the frontagers. If s. 35 is not in force, they must take the street as they find it, in regard to relative widths as well as overall width.

12.—Public Health Act, 1936, s. 58—*Dangerous building—Order not specifying time—Fresh application.*

On the complaint of a rural district council, the justices made an order under the Public Health Act, 1936, s. 58 (1) (i) (*a*) obliging the owner of a cottage in a dangerous condition to execute work necessary to obviate the danger, or if he shall so elect, to demolish. When the case was heard, the local authority did not ask for a time limit and none was fixed in the order.

The owner of the cottage has failed to take any action and the local authority therefore wish to proceed under s. 58 (2), but that sub-section mentions " time . . . specified " in the order. The local authority has asked for the order to be amended by the insertion of a time limit, but it is thought that this cannot be done, and your opinion as to the correct method of enforcing the order is requested. AST.

Answer.

Lumley, p. 183, expresses the opinion that if the court has not specified a time subs. (2) cannot be worked. An alternative view is that, if no time is specified, the owner has a bare minimum after which the council may execute the order themselves : *ex hypothesi* there is danger to life and limb which ought to be dealt with. In an urgent case, we doubt whether a local authority would run any risk by taking the bolder course. If the council act on *Lumley's* more cautious view, we agree that the order of the court cannot be amended, but the council can apply afresh to the court under subs. (1)—the danger is still there, and therefore the jurisdiction is still there. In so applying, they should point out that the owner had not obeyed the previous order, and argue for the shortest possible time to be specified.

13.—Road Traffic Acts—*Doctor's evidence in drunk-in-charge cases—Questions to defendant as to movements prior to arrest—Admissibility of doctor's evidence as to defendant's replies.*

In this county, when a person is suspected of being under the influence of drink to such an extent as to be incapable of having proper control of a motor vehicle, a doctor is called in by the police and, with the consent of the defendant, examines him in the presence of police officers. In this examination he follows the headings of a printed form which is supplied by the county constabulary and which appears to be based upon the tests referred to in *Taylor's Principles and Practice of Medical Jurisprudence*, 10th edition, vol. 11, p. 540 and onwards.

Included in the form is the heading " Memory of incidents within the previous few hours and estimation of their time intervals." According to *Taylor* this is one of the most valuable tests.

In connexion with this last mentioned test, it is usual for the doctor

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to question the defendant and, as a result of the answers, to form an opinion as to whether his memory, etc., is good, bad or indifferent. In a number of cases the doctor records part or all of the information given in this manner by the accused, and, not infrequently, this includes a narrative of the public houses visited and liquor consumed at each. From the point of view of the prosecution, this may well be very valuable evidence, as substantiating the allegation that the accused was unfit at the material time.

I am somewhat doubtful, however, whether it is legitimate to give in evidence such remarks by the defendant, and I should be glad to have your views as to this, and details of the line of argument by which you come to your conclusion. JOHNIAN.

Answer.

We think that such evidence is admissible. In *R.* v. *Nowell* [1948] 1 All E.R. 794 the question of the reasons for calling a doctor at the police station, and his position when so called was discussed. The doctor's evidence is normally to be accepted as that of a professional man giving independent expert evidence with no other desire than to assist the court.

The questions to which it is suggested exception can be taken are asked as part of the doctor's examination to enable him to form a reliable opinion on the defendant's condition. The defendant is entitled to decline to answer any question if he wishes, but if he tells the doctor, when asked what he was doing before his arrest, that he visited various public houses and had various drinks, we can see no objection to the doctor's giving this in evidence. We do not think the doctor's questions should assume the nature of a cross-examination of the defendant; they should be of a general kind limited to what is necessary for the purpose suggested in the question put to us.

14.—Road Traffic Acts—*Driving licence*—1934 *Act, s.* 33 (3)—*Requirement to produce on conviction for careless driving—No requirement at time of conviction—Subsequent requirement by letter.*

A was proceeded against for careless driving. He attended court and was convicted. The justices fined him and ordered his licence to be endorsed. Due to an oversight A left court without producing his licence. Two days later when the omission was discovered a letter was sent requesting that the licence be produced. A refuses and contends that (*a*) he was never ordered to produce it and (*b*) the court is now "*functus officio*" and cannot require it.

Assuming (*a*) to be correct is the subsequent letter from the court sufficient to satisfy the requirements of s. 33, Road Traffic Act, 1934. Should proceedings be taken under s. 7 of the Road Traffic Acts, 1930, or is (*b*) correct? JANN.

Answer.

This is a difficult question and our answer is influenced by the assumption that it is desirable to avoid an interpretation which makes nugatory other statutory provisions. When a court orders a licence to be endorsed it is clearly intended that the court shall carry out its own order and place the endorsement on the licence. It is to be noted that in three sections (ss. 8 and 32 of the 1930 Act, and s. 33 of the 1934 Act) a court is empowered to require production of a licence for purposes connected with the Acts, but it is nowhere specified how the requirement shall be made if it is not made to the defendant in person at the hearing.

We think that in s. 33 (3) of the 1934 Act the legislature probably contemplated that the requirement would be so made at the hearing, and we can see the force of the argument that if it is not so made the court is *functus officio*. Bearing in mind, however, that s. 33 (3) and (4) are substituted, in the appropriate cases, for s. 8 (2) (*a*) of the 1930 Act we find it difficult to accept an interpretation which involves that by the oversight in not requiring *at the time* that the licence be produced to it the court is to be prevented from carrying out its own order that the conviction be endorsed on the licence. It is to be noted also that s. 33 (3) does not in terms limit the court to making the requirement forthwith.

With some hesitation, therefore, we think that the requirement may be made subsequently in any way that satisfies a court which has thereafter to consider the matter that it came, or may reasonably be assumed to have come, to the defendant's notice. It would be open to the defendant to show, if he could, that in fact the requirement did not come to his notice, and through no deliberate fault on his part.

15.—Tort—*Requisitioned premises—Tree roots damaging neighbouring property.*

I refer to P.P. 7 at 110 J.P.N. 434. Would your opinion be different if given today, as the opinion given in 1946 was given before the passing of the Crown Proceedings Act, 1947? The position is, a tree growing in the garden of premises requisitioned by the council on behalf of the Minister of Local Government and Planning is causing damage to the neighbouring property by reason of the spreading of its roots. Before incurring any expenditure in removing the trees or destroying the roots, I wish to be certain that the council or the Crown is under some liability for this nuisance as occupiers. AMB.

Answer.

The Crown's immunity in tort was involved in our answer of 1946, and, so far, that answer would today have to be rewritten. But there was also the question whether the town clerk or the council had done anything in fact to make them liable, assuming the Crown was not. So here, it seems right to consider where liability rests. As we said in the answer cited, a requisitioning authority is not owner, and the liability for nuisance by the roots or branches of trees (or for trespass, as we should have preferred to put it, but for the remarks of Kay, L.J., in *Lemmon* v. *Webb* (1895) 59 J.P. 564, quoted by Lewis, J., in *Butler* v. *Standard Telephones* (1940 1 All E.R. 121), is in principle an owner's liability: the whole basis of *Lemmon* v. *Webb*, *supra*, is that the question was between owners. We need not consider for the present purpose what would be the position (say) of a tenant for ninety-nine or even twenty-one years under a lease—though even where there is a long lease we doubt whether, in regard to trespass or nuisance by growing trees, the doctrine applies which has been enunicated in some nuisance cases, *e.g.*, *Roswell* v. *Prior* (1701) 12 Mod. 635; *Broder* v. *Saillard* (1876) 45 L.J.Ch. 414, that the occupier is liable because he has chosen to take a lease of premises on which a nuisance exists. Whatever the position of a tenant under a long lease, nobody would, at the other extreme, hold a weekly tenant liable. In principle, we do not see how liability can attach to a person (Crown or subject) who has mere possession under a statutory and temporary title, unless indeed he has used his position to prevent the owner from rectifying the matter complained of: *cp.*, despite the different subject matter, what we said at p. 166, *ante*, about dilapidated structures. We think the proper course, as an act of courtesy towards the owner, is to inform him that the trees are causing damage to adjoining property, and offer facilities to him to enter and, without prejudice to the requisition, abate the damage, but, as between the council and the Crown on the one hand and the adjoining owner on the other hand, to deny liability and refer the person damaged to the owner of the trees.

16.—Trespass—*Man in women's convenience—Whether offence—Binding over.*

A man went into a ladies' lavatory, and while there went in and out of several empty compartments, presumably to hide when other people were present. He did, however, go on his hands and knees whilst there in front of an occupied compartment and look under the door. He was wandering about the lavatory and the vicinity for about an hour. Nothing previous is known about the man, but if he made a practice of haunting such places it would probably cause local disquiet. In considering what to do about this a number of points have arisen:

1. Is there such an offence as "acting in a manner likely to cause a breach of the peace," if no breach of the peace has been occasioned, and there are no threats to repeat the conduct?

2. Has the man behaved in such a way that he can be required to produce a surety for his good behaviour? If so, why? *Blackstone* says a man may be bound to his good behaviour for causes *contra bonos mores*, but has previously spoken of probable grounds to suspect future misbehaviour.

3. Is there any way of dealing with the man on any other lines of approach? There is no local Act or byelaw. The convenience is in a permanent building privately owned by the local authority, and opened and closed at their will, and off a yard to which the public have access and through which there is probably a public right-of-way. AYZ.

Answer.

1. There is no such offence: *see* article at 114 J.P.N. 613, and others there referred to. In some places, including the Metropolitan police district, there is a statutory offence of using insulting words or behaviour . . . whereby a breach of the peace may be occasioned (not "has been occasioned"). The local Acts differ slightly; we think a man behaving as described might find his face slapped, and therefore could be convicted under such a provision, but the question does not arise since you say no local Act is in force.

2. We think so: *see* middle of second column of the article cited—the conduct described can hardly be called innocent in itself. A man might go into a woman's sanitary convenience by accident, or when drunk, or even under the impulsion of sudden illness or an urgent call of nature, without its being a proper inference that he needed to be bound over. But staying a long time and looking under doors is clear evidence of some mental kink. It suggests a need for treatment; in the legal sphere, little as in many cases we like this binding over (*cp.*, p. 211, *ante*, second column) we think it is the sort of case where binding is appropriate.

3. Intrusion into conveniences of the other sex has commonly been made an offence by byelaw. We can suggest no other method. Civil proceedings for the technical trespass would be useless.

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